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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 351

United Construction Workers, Affiliated With United Mine Workers of America; District 50, United Mine Workers of America; Charles A. Neal, Elza Johnson and Sherman Blackshire, *Petitioners*,

vs.

National Labor Relations Board.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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IN THE

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OCTOBER TERM, 1952

No.....

United Construction Workers, Affiliated With United Mine Workers of America; District 50, United Mine Workers of America; Charles A. Neal, Elza Johnson and Sherman Blackshire, *Petitioners*,

vs.

National Labor Relations Board.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, United Construction Workers, Affiliated with United Mine Workers of America, District 50, United Mine Workers of America[1], and Charles A. Neal, Elza Johnson and Sherman Blackshire[2], and each of them, pray that

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1. Petitioner, United Construction Workers, Affiliated with United Mine Workers of America, will be referred to herein as "UCW," and Petitioner, District 50, United Mine Workers of America, as "District 50".

2. Petitioners herein were the Respondents in the case in the United States Court of Appeals for the Fourth Circuit, numbered 6433, and entitled "National Labor Relations Board, Petitioner, v. United Construction Workers, Affiliated with United Mine Workers of America; District 50, United Mine Workers of America; and Charles A. Neal, Elza Johnson and Sherman Blackshire, Respondents".

a writ of certiorari issue to review the judgment and decree of the United States Court of Appeals for the Fourth Circuit, entered on the 18th day of July, 1952, (R. A. 97),[3] by which it ordered, adjudged and decreed, on petition (R. A. 89-94) filed in said Court of Appeals by National Labor Relations Board (herein called "Board"), that an order of the Board entered by it on June 29, 1951, in a proceeding before said Board numbered 9-CC-31, entitled "In the Matter of United Construction Workers, Affiliated with United Mine Workers of America, District 50, United Mine Workers of America, and Charles A. Neal, Elza Johnson and Sherman Blackshire, Their Agents and Kanawha Coal Operators' Association" be enforced, and that said "United Construction Workers, Affiliated with United Mine Workers of America; District 50, United Mine Workers of America; and Charles A. Neal, Elza Johnson and Sherman Blackshire abide by and perform the directions of the Board in said order contained." (R. A. 97).

A transcript of the record in said proceeding, including the proceedings in said Court of Appeals, is furnished herewith, in accordance with the Rules of this Court.[4]

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the "Appendix to Respondents' Brief", p. 95. The Intermediate Report of the Trial Examiner (B. A. 27)

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3. Herein "B. A." refers to the appendix filed by National Labor Relations Board in the Court of Appeals and is styled "Appendix to Petitioner's Brief"; and "R. A." refers to the appendix filed by Petitioners (Respondents in the Court of Appeals) and is styled "Appendix to Respondents' Brief". The number following the abbreviation refers to the page number of the respective appendices. The printed proceedings in said Court of Appeals have been added to said appendix of the respondents. "Tr." refers to the transcript of proceedings before the Board's Trial Examiner.
4. A stipulation has been filed regarding the printed record for purposes of the petition for writ of certiorari.

and the Board's Decision and Order (B. A. 82) are reported at 94 NLRB 1731.

JURISDICTION

The Circuit Court of Appeals entered its judgment and decree on July 18, 1952. (R. A. 97). The jurisdiction of this Court is invoked under Title 28, U. S. C., Secs. 1254(1) and 2101(c) [Act of June 25, 1948, chap. 646, 62 Stat. 928, 961, 962, amended May 24, 1949, chap. 139, Sec. 106, 63 Stat. 104], and Section 10(e) of the Labor-Management Relations Act, 1947, (Act of June 23, 1947, chap. 120, Title I, Sec. 101, 61 Stat. 146, amended June 25, 1948, chap. 648, Sec. 32, 62 Stat. 991).

SUMMARY AND STATEMENT OF THE MATTER INVOLVED

On July 11, 1950, National Labor Relations Board (petitioner below and hereinafter called "Board") issued its complaint against UCW, District 50 and Charles A. Neal, Elza Johnson and Sherman Blackshire, their agents, charging them with the commission of unfair labor practices within the meaning of Section 8, subsections (b)(1)(A) of the Labor-Management Relations Act, 1947[5], and charging UCW and District 50 with the commission of unfair labor practices within the meaning of said Section 8, subsections (b)(4)(A) and (B). (B. A. 2-7).

Petitioners herein filed (1) a Motion to Dismiss Complaint, (2) their Answer to the Complaint, asserting a denial of the commission of the charges of unfair labor practices (B. A. 8) and (3) a motion for a more definite state-

5 The term "Act" as used herein refers to Labor-Management Relations Act, 1947.

ment or Bill of Particulars of vague and uncertain averments (R. A. 2-4), hereinafter discussed. A hearing was had before a trial examiner of the Board, who, under date of October 27, 1950, issued his Intermediate Report and Recommended Order (R. A. 27-51), to which Petitioners filed their Exceptions. (B. A. 52-81, R. A. 4-8). The Board modified said Report and, excepting such modifications, adopted the trial examiner's Report in its Decision and Order dated June 29, 1951. (B. A. 82-91).

On April 18, 1952, the Board filed with the United States Court of Appeals for the Fourth Circuit its Petition for enforcement of said Board order. In the Court of Appeals, petitioners contended, among other matters[6], that even if the Court concluded that petitioners had committed unfair labor practices as charged in the complaint, the Board's order was too broad and exceeded the Board's power and jurisdiction granted under Section 10(c) of the Act and the limitations imposed by the federal judiciary upon such power and jurisdiction to issue cease and desist orders, and therefore required modification. On July 18, 1952, the said Court of Appeals decreed that said Board order "be enforced" and that said UCW, District 50, and Neal, Johnson and Blackshire "abide by and perform the directions of the Board in said order contained". (R. A. 97). Peti-

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6. In the Court of Appeals, in addition to the position that the Board's order is too broad, and should be modified, petitioners asserted that the Board's findings of fact and conclusions that the petitioners had violated Section 8(b)(4)(A) and (B) and Section 8(b)(1)(A) were not supported by substantial evidence on the record considered as a whole and that denial of enforcement of the Board's order was required; that petitioners' alleged wrongful conduct was lawful primary picketing which is not encompassed within the prohibitory language of Section 8(b)(4) of the Act; and that petitioners' alleged activities are not unfair labor practices affecting commerce within the meaning of the Act and that the Board was without power to issue its order and that the Court of Appeals had no jurisdiction to enter a decree enforcing it.

tioners now seek a writ of certiorari to review such judgment and decree of enforcement. The Board's order is printed in the Appendix hereto, at page 62, for the Court's convenience.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Relations Act, 1947, are set forth in the Appendix, *infra*, pp. 59-62.

THE FACTS AND BOARD'S FINDINGS

a. The Parties

Carbon Fuel Company (herein called "Carbon") mines, processes and sells bituminous coal. Its operations are located 17 miles "up Cabin Creek, in the southeast end of Kanawha County", West Virginia. (B. A. 110). In its operations, consisting of five mines, adjacent to each other[7], it purchases mine timbers for use at three of its mines[8]. These mine timbers are supplied by timber suppliers in four counties in West Virginia—Lincoln, Clay, Nicholas and Kanawha—whose average hauling distance to Carbon is approximately fifty-five miles. (B. A. 116-117).

C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright (herein collectively called "Timbermen") are individually engaged in producing mine timbers, substantially all of their respective pro-

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7. These mines are designated as Nos. 3, 5, 9, 9X and 12. (B. A. 110).
8. Mine timbers used at No. 9 mine are cut by Carbon's own employees. At its No. 12 mine Carbon uses steel in place of timber. (R. A. 24-25).

ductions being sold to Carbon.[9] "Practically" all of Foreman's timbers are sold to Carbon (B. A. 99); Saul and Lynch sell all of their timbers to Carbon (B. A. 131, 150); Wright testified that the extent of his timber operations was that "we cut posts for Carbon" (B. A. 133) and Huffman testified that in addition to Carbon he sells "through Mr. Bailey". (B. A. 149).

Charles A. Neal is the Regional Director of both Region 23, UCW, and Region 23, District 50, and Elza Johnson and Sherman Blackshire are organizers on Neal's staff within the geographical area of Region 23. (B. A. 153-157).

b. Region 23, UCW, and Region 23, District 50, have a limited geographical area. The acts condemned by the Board occurred within a limited section thereof.

The activities of petitioners, which the Board has condemned, occurred within the geographical area of Region 23 of UCW and Region 23 of District 50 which are limited to six counties (Mason, Putnam, Kanawha, Clay and Boone and a part of Fayette County), all in West Virginia. (B. A. 155). No union activity upon which the Board premises its findings of fact occurred outside this limited geographical area of said Regions 23. (B. A. 155). Geographically, each of these two regions includes the area where Carbon is located. The specific conduct which the Board found to constitute violations of Section 8(b) of the Act occurred only within a limited portion of Region 23, namely, in the southeast portion of Kanawha County, (B. A. 110).

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9. Timberman Saul has no saw mill; his locations move from time to time. (R. A. 37-38). Timberman Wright likewise has no saw mill and purchases some of his mine timbers from farmers who cut their own timber. (B. A. 138-139). The timbermen sell no timber outside the State of West Virginia. (B. A. 100, 131, 133, 142, 149, 150).

c. On the issue of the violation of Section 8(b) (4) (A) and (B): The sole activity condemned by the Board is the picketing at Carbon's mines, and the Board found that the only employees affected thereby are Carbon's employees.

Prior to September 7, 1949, when Neal became Regional Director of Region 23, UCW and of Region 23, District 50, there had been a campaign to organize the timber workers in the timber industry in Region 23; and the Board found that "these efforts met with little success". (B. A. 32). On April 17, 1950[10], UCW entered into an agreement with Central West Virginia Lumberman's Association (B. A. 17), an employers' organization in the timber industry (B. A. 104), and herein called "Association", providing, *inter alia*, for terms and conditions of employment of employees of Association members. District 50 is not a party signatory thereto. (B. A. 17, 25).

On May 15 Neal met with UCW organizers on his staff (R. A. 41) and inaugurated a campaign to organize the timber workers in Region 23. (B. A. 157). At that time the Association was actively soliciting members for that Association. Neal advised the Association that "we could not or would not sponsor the Lumbermen's Association in our drive"[11].

Timber operators who drive trucks themselves are eligible for membership in UCW. (R. A. 42). Saul drove his own truck (B. A. 130) and "belonged to District 50" (B. A. 131).

10. Unless otherwise indicated, the dates used herein refer to the year 1950.
11. The organizers were instructed by Neal to contact the truck drivers at "destination where they unload their timbers, and talk to them about joining the union". (B. A. 157).

Likewise Wright (B. A. 139), Lynch (Tr. 222), Huffman (R. A. 40), and Foreman drove their respective trucks. (B. A. 97). Each of Timbermen Huffman and Lynch, testified that Blackshire told him that membership in UCW and the Association were essential to hauling timber to Carbon. Lynch attributed to Blackshire the statement that Lynch's employees would have to join UCW. These statements were denied by Blackshire. Foreman testified that Blackshire approached him about joining a a labor organization but admitted that Blackshire told him if his partner had joined UCW that was good enough. (R. A. 21). He did not remember if Blackshire asked him to join the Association. (R. A. 20). Nevertheless the examiner found (B. A. 35) and the Board agreed (B. A. 82-83) that Blackshire told Foreman that he "must join the Association and United". Likewise, Lynch credited Neal with the statement that both Union and Association stickers were required to haul timber to Carbon; and according to Timberman Wright, who joined UCW in April, 1950, Neal told him to join the Association. Neal denied these statements. The Board agreed with its examiner that Blackshire and Neal became active in coercing the Timbermen to join the Association. (B. A. 35). As shown above, Association members were soliciting for Association membership, and Huffman related he was stopped on May 17 by Association member Campbell and two other unidentified persons. Likewise, an employee of Lynch testified that he was stopped on two occasions, on one of which he was told union membership was necessary to haul posts to Carbon, but the witness could not identify the persons with whom he talked (B. A. 119) but testified that the person was not present at the hearing in the instant case. (R. A. 26). Another employee also was unable to identify who stopped him. (T. 27).

On the morning of May 18 Johnson and Blackshire met

a group of employees of J. L. Perdue, an Association member whose employees were UCW members and on "strike for more money", at Cabin Creek Junction, a distance of about 17 miles from Carbon's operations[12]. Blackshire distributed picket signs to some of these employees, which read "Timber operators supplying this mine unfair to organized labor. United Construction Workers affiliated with United Mine Workers". Association member Perdue was at the Junction also. (B. A. 171). Petitioners denied, but the Board agreed with its trial examiner's finding, that Jay Brown, another UCW organizer, was present. Carbon's timber yards are located on its property and timbers are unloaded at "12 or 15 places at its various mines." (B. A. 115). Though Blackshire's testimony that his object was to establish pickets for timber truckers (B. A. 163) was corroborated by a Board witness (R. A. 84, 85), the Board found that Blackshire told the pickets to go to the mines, and talk to the miners and endeavor to get their support and help, and to induce the miners to quit using scab timber (B. A. 36),[13] although no witness credits Blackshire with the statement concerning inducement on May 18[13a].

Three automobiles left the Junction. One of them was driven to Carbon's No. 9 and 12 mines; and although Board's witness Gillenwaters, who rode in this car, denies that Jay Brown was the driver of it (B. A. 165-167), the Board agreed with its trial examiner that Jay Brown did drive

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12. All timber trucks supplying Carbon "come up Cabin Creek" from the Junction. (B. A. 116).

13. Although the Board concurred with this finding by the Trial Examiner, Board's witness Gillenwaters' testimony challenges such finding. He testified (B. A. 168) that Blackshire stated "we will talk to the miners a while and see what they say about it". Gillenwaters testified also that petitioners had not told the men that the miners' cooperation not to set the timber would help the men. (R. A. 82).

13a. Witness Mitchell testified that Blackshire on May 17 stated "he wanted two men to go up there to the mines and talk to the men, see if they wouldn't quit using scab timbers" . . . (B. A. 174).

it. (B. A. 82, 36). According to Gillenwaters, this car went to Carbon's timber yards (R. A. 82) at the No. 9 and No. 12 mines (which are "side by side"), that two of the men of their own accord "got out our signs", put them on and walked up and down between a hoist at the No. 12 mine and the steps where the miners go up the hill to go to work (B. A. 168) but where timber truckers would pass. (R. A. 30). The miners, according to Gillenwaters, "bunched around there talking among themselves"; and, as Carbon's general mine foreman at the No. 12 mine related, about fifty Carbon employees (members of the United Mine Workers of America) who were supposed to be at the mine portal at 7 A. M. to go to work did not work the shift (7 a. m. to 3 p. m.) that day. This was the only shift which did not work. (R. A. 31). Other Carbon employees saw men at the No. 9 lamp house and at the hoist landing at the No. 3 mine, wearing picket signs reading, "Timber operators supplying this mine unfair to organized labor, UCW, affiliated with United Mine Workers". (B. A. 111, 122, 123).

Johnson drove one of the automobiles, which left the Junction and in which five other men were riding, to the timber yard near the incline at the No. 3 mine "for the purpose of contacting truck drivers who came in there, who did not belong to the Union". (B. A. 160). According to a Board witness, one of the men with Johnson carried a placard; but there is no evidence that any miners at the No. 3 mine saw the placard or were in anywise contacted by Johnson or the men with him. Carbon's superintendent admitted that these men were at places where timber truckers could see them as they drove in. (R. A. 25-26). No miner ceased work at this mine. From here Johnson started to the No. 9 and No. 12 mines. (B. A. 161). While the Board agreed with its examiner that Johnson was present and participated in the picketing at No. 9

mine, the uncontradicted evidence is that Johnson did not arrive there until about 9 a. m. when the men in the car in which Gillenwaters had ridden "were all getting in the cars, ready to leave". (R. A. 81).

Blackshire and a group of men left in the third car and as the examiner found (B. A. 36) "first went to another mine, not material here, and from there went to No. 9 mine at Carbon later in the morning". Undisputed is Blackshire's statement that he went to Carbon's operation on May 18 only to "tell Mr. Johnson to come into the office in the morning" and that he then "turned my car around and came back down the creek". (R. A. 72).

Association member Perdue was seen at Carbon's premises and he and other Association officers, together with 15 or 20 men, were at Cabin Creek Junction on the afternoon of May 18 (R. A. 52-54).

Neal was not at Cabin Creek Junction nor at Carbon's premises; but the trial examiner's found (1) that Johnson and the pickets in his car drove to Carbon's No. 3 mine and set up a picket line at the hoist where the miners reported for work, (2) that Blackshire and the pickets with him "first went to another mine, not material here, and from there went to No. 9 mine" and that (3) Brown and the remaining pickets drove to No. 9 and No. 12 mines[14] and set up picket lines in front of No. 9 lamp house and No. 12 hoist, and concluded that the "placing of the pickets at No. 3 and No. 9 mines for the purpose of inducing or encouraging the miners to strike or concertedly refuse to perform any part of their work" violated Section 8(b) of the Act. (B. A. 40). The Board concurred therein

14. These mines are "side by side". (B. A. 168)

(B. A. 82-83), as well as (B. A. 84) in the examiner's finding (B. A. 40) that on May 18, 1950, the Respondents did induce and encourage the employees of Carbon Fuel Company to engage in a strike and concerted refusal in the course of their employment to use or otherwise handle or work on mine timbers."

Hence, the activity condemned, upon which the Board concluded that an unfair labor practice within the meaning of Section 8(b)(4)(A) and (B) had been committed, was confined to the picketing on May 18 at Carbon, and the employees toward whom such activity was directed included only Carbon's employees.

The objects of the picketing

To sustain the finding that one of petitioners' "activities on Carbon's property of May 18, 1950" was "to force or require Carbon Fuel Company to cease using, handling or otherwise dealing in the products of another producer, *viz.*, the mine timbers of Timbermen" (B. A. 42), the Board credited statements of Board's witnesses, denied by Johnson (R. A. 56-58), that Johnson had stated he was going to "shut No. 9 mine down" (B. A. 38), that he expected to picket the mine to keep Carbon from using scab timber (B. A. 38), and that he was going to stop scab timber from coming in (B. A. 38), as well as Blackshire's giving picket signs to, and allegedly telling, Perdue's employees to talk to the miners and get their help, to try to get them to stop using scab timber, hereinabove discussed. (B. A. 42). The examiner found, and the Board agreed that thereby "respondents violated Section 8(b)(4)(A) of the Act". (B. A. 42, 82-83, 84).

Likewise, the Board agreed (B. A. 84-85) with its exam-

iner (B. A. 45) that the picketing at Carbon on May 18 established that another object was "forcing or requiring Timbermen as employers and as self-employed persons to join Respondent United and the Association" in violation of said Section 8(b) (4) (A).

The Board found, too, that the third object of petitioners' picketing activity at Carbon—namely, that of "forcing or requiring" Timbermen "to recognize and bargain with Respondent United as the representative of the employees of Timberman, despite the fact that United had not been certified as the bargaining representative of such employees in violation of Section 8(b) (4) (B)"—was "apparent from the fact that the Respondents were seeking to have Timbermen join the Association which had an association-wide closed shop contract with Respondent United". (B. A. 85, n. 8).

d. On the Issue of the Violation of Section 8(b) (1) (A): The Board finds that only one right of one employee of one employer was violated.

According to George Bryant, a truck driver for Timberman Huffman, on May 18 he arrived at the Carbon supply house about 6:30 A. M. with a load of mine timbers. While waiting for someone to come "so I could unload my timbers", Elza Johnson and seven others came to his truck, and Johnson told Bryant that since he had no sticker he could not unload any "scab" timber. (B. A. 140). While Bryant asserts, and Johnson denies it, (R. A. 62), that Johnson stated that, "Before we will let this mine run on scab timber, we will shut it down. Bryant admitted that Johnson and those with him left Bryant to go over to the No. 3 mine and that after they left him, he (Bryant) turned

his truck around and took his timbers back to Huffman. Johnson testified that he inquired of the truck driver "if he belonged to the Union, and he said he did not; and we asked him if he knew about the campaign to organize the timber workers, and he said he had heard about it. He said he thought it was a good thing, and he wouldn't bring any more timbers back up there until after he belonged to the Union." (R. A. 59).

The Board found that

> "c. The refusal of the pickets led by Johnson to permit George W. Bryant to continue with his work of unloading the timber on his truck because Bryant did not have a sticker on his truck indicating union membership, clearly deprived Bryant of his right under Section 7 of the Act to join, or refrain from joining, any labor organization." . . . (B. A. 86).

and that "the only violation of Section 8(b) (1) (A) of the Act by the Respondents was their coercive conduct with respect to Bryant". (B. A. 86). The Board dismissed the complaint "insofar as it alleges violations of Section 8(b) (1) (A) *other than the one* found herein". (B. A. 89). (*Italics supplied*).

THE BOARD'S DECISION AND ORDER

a. In relation to its findings that petitioners violated Section 8(b) (4) (A) and (B) of the Act.

1. *The Board found that petitioners induced and encouraged Carbon's employees only. Its order covers the employees of all employers, excepting those of the five Timbermen.*

In charging (B. A. 5) that petitioners had violated Section 8(b)(4)(A) and (B) of the Act, the Board, in its complaint, averred that "*employees of Carbon*" [15] had been induced and encouraged to engage in a strike or concerted refusal in the course of their employment to perform services *for their employer*. The alleged objects of such inducement and encouragement, according to the complaint, were three-fold: (1) "to force or require *Carbon*" to cease using or dealing in the products of, and to cease doing business with, Lynch, Saul and Huffman (B. A. 5); (2) "to force or require Huffman, Saul and Lynch to join UCW or District 50 and Central West Virginia Lumbermen's Association" (B. A. 5); and (3) "to force or require *Huffman, Saul and Lynch and other employers* to recognize or bargain with UCW or District 50 as the representative of their employees, although neither District 50 nor UCW has been certified as the collective bargaining representative of said employees in accordance with provisions of Section 9 of the Act". (B. A. 5, 6)[16].

Thus, the complaint specifically limited its allegations that Section 8(b)(4) had been violated to the inducement and encouragement of *Carbon's* employees. The evidence adduced before the Board's trial examiner on the issue of whether petitioners had violated the secondary boycott section of the Act related exclusively to *Carbon's* employees; the trial examiner limited his findings and conclusions to *Carbon's* employees (B. A. 40, 45)[17] and in his "Conclusions

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15. Italics supplied.

16. Allegations of other violations of Section 8(b)(4), appearing in paragraph 16 of the complaint (B. A. 6) were dismissed by the Board (B. A. 89).

17. The Trial Examiner's "Conclusion" reads:
"The evidence convinces me, and I find that on May 18, 1950, the Respondents did induce and encourage the *employees of Carbon Fuel Company* to engage in a strike . . . "(B. A. 40) (Italics supplied).

of Law" declared that Section 8(b)(4)(A) and (B) had been violated because petitioners had induced and encouraged "employees of *an* employer . . . to engage in a strike . . ."[17a] (B. A. 47). Notwithstanding that the complaint, the issue of whether Section 8(b)(4) had been violated by petitioners, the evidence and the trial examiner's findings conclusions and conclusions of law concerned only the employees of a single employer, namely, Carbon Fuel Company, and although the trial examiner's Intermediate Report contains no determination, nor any discussion of the necessity of extending the order beyond the issue and evidence relating to Carbon's employees, the trial examiner recommended that the Board's order require that petitioners cease and desist from inducing and encouraging not only the employees of Carbon but also the employees of "any other employer". (B. A. 48). Upon petitioners' complaint to the Board that such recommendation was too broad and beyond the Board's power, authority and jurisdiction, the Board modified (B. A. 87, 88) the recommendation but only to the extent of excluding from such unlimited coverage the employees of the five Timbermen (Huffman, Saul, Lynch, Foreman and Wright). Though the Board found (B. A. 84) that petitioners induced and encouraged the *employees of Carbon* to engage in a strike and a concerted refusal in the course of their employment to use or otherwise handle or work on mine timbers, paragraph 1.(a) of its order interdicts the inducement and encouragement of the employees of every employer other than the 5 Timbermen, without limitation or regard of the industry in which

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17-a. Italics supplied.

they are engaged and of the employers' locations.[18].

The order, consistent with its broad inclusion of employers, also enjoins the inducement and encouragement of employees "to engage in the strike or a concerted refusal . . . to perform any services for *their respective employers*". The italicized words should be stricken and the order limited to the one employer, namely, Carbon.

The above discussion of paragraph 1.(a) relates to each of the objects contained in subdivisions (1), (2) and (3) of said paragraph and discussed below.

2. *The sole act of inducement and encouragement condemned by the Board was petitioners' picketing at Carbon. Its order blankets all forms of inducing and encouraging.*

Despite the fact that the evidence and the Board's findings related only to the act of picketing at Carbon's premises no May 18, the Board's order is not so limited but erroneously proscribes inducement and encouragement regardless of the manner or form thereof. In the Court of Appeals the Board argued (brief, p. 15) that petitioner had violated Section 8(b)(4)(A) and (B) of the Act "by Picketing the Premises of Carbon".

b. In relation to its findings concerning the objects of petitioners' act of inducement and encouragement.

1.

As hereinbefore noted, the complaint alleged that one of

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18. Paragraph 1.(a) of the Board's order prohibits petitioners from "(a) Inducing and encouraging the employees of Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or commodities, or perform any services for their respective employers . . ." (R. A. 88).

the objects of petitioners' inducement and encouragement of Carbon's employees was

> "to force or require Huffman, Saul and Lynch to join UCW or District 50 and Central West Virginia Lumbermen's Association."

At the hearing, counsel for Board's General Counsel made positive statement, on motion of petitioner for particularization, that only the five Timbermen were involved (R. A. 14, 15), and the trial upon the complaint proceeded upon such representation. Such limitation is found in the Board's finding of fact that one of petitioners' objects was (B. A. 84, 85)

> "forcing or requiring Timbermen as employers and as self-employed persons to join" UCW and said Association.

The Board's order, paragraph 1.(a)(1), requires that petitioner's cease and desist from inducing and encouraging the employees of any employer (other than the 5 Timbermen) to engage in a strike, etc. where an object thereof is (B. A. 88)

> "(1) to force or require *any employer* or *self-employed person to join any labor or employer organization*". (Italics supplied)

This language follows the trial examiner's recommendation (B. A. 48), to which petitioners excepted (B. A. 73, 74,; R. A. 8). Both before the Board and in the Court of Appeals, petitioners asserted that, consistent with the Board's findings, that the italicized words "any employer or self-employed person" should be limited to the 5 Timbermen; that the italicized words "any labor . . . organization" should be limited to UCW, or at most, to UCW and District 50;

and that the italicized words "any . . . employer organization" should be restricted to the Association. But in said paragraph 1.(a)(1), the Board provides for a blanket cease and desist order, the effect of which is to restrain petitioners from unfair labor practices in which they have not been found to have engaged and which are unrelated to any proven unfair labor practice.

2.

The complaint alleged that another of such objects was

> "to force or require Carbon to cease using or dealing in the products of Lynch, Saul and Huffman and to cease doing business with Lynch, Saul and Huffman". (B. A. 5; complaint, paragraph 14).

The Board found (B. A. 84) that an object was

> "forcing or requiring Carbon to cease doing business with Timbermen".

The Board's order, paragraph 1.(a)(2), following in effect the trial examiner's recommendation (B. A. 48) to which petitioners excepted (B. A. 73, 74; R. A. 8), requires that petitioners cease and desist from the prohibited conduct of inducement and encouragement of employees where an object thereof is to force or require *any employer or any person* (other than the 5 Timbermen) to cease dealing in the Timbermen's products[19]. (Italics supplied). (B. A. 88). Both

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19. The Board's order rquires that petitioners cease and desist from:
(a) Inducing and encouraging the employees of Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or commodities, or to perform any services for their respective employers, where an object thereof is . . . (2) to force or require Carbon Fuel Company *or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) or other person* to cease using, selling, handling, transporting, or otherwise dealing in the products of C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright.

before the Board and in the Court of Appeals, petitioners contended, that consistent with the Board's findings, paragraph 1.(a)(2) should be modified and limited to "Carbon" so as to read: "to force or require Carbon Fuel Company to cease using" etc.

3.

The complaint alleged (B. A. 5, 6; R. A. 14-15) that a third object of petitioners' alleged act of inducement and encouragement was to force the five Timbermen to recognize or bargain with UCW or District 50 as the representatives of their employees although neither had been certified as the bargaining representative of said employees in accordance with Section 9 of the Act. The Board limited its finding to UCW. (B. A. 84). Its order (paragraph 1.(a)(3), paralleling the complaint and not the Board's finding, enjoins the inducement and encouragement of employees as aforesaid where an object thereof is "(3) to force or require" the 5 Timbermen to recognize or bargain with UCW or District 50 as representative of their employees until such organization has been certified as such under said Section 9.

c. In relation to its findings that petitioners violated Section 8(b)(1)(A) of the Act.

1. *Upon a finding that only one employee had been restrained or coerced in the exercise of one right, the Board's order is limitless both as to acts restrained and to employees encompassed.*

The complaint alleged (B. A. 5) that petitioners had violated Section 8(b)(1)(A) of the Act by restraining and coercing the "employees of Carbon, Huffman, Lynch and Saul in the exercise of their rights as guaranteed in Section 7 of the Act . . . in order to compel said employees to

join or assist District 50 or UCW".[20] While the complaint charged that petitioners had restrained and coerced employees of the four designated employers, the Board found that only one employee of one employer (Timberman Huffman) had been deprived of his right under Section 7 and that as to that one employee the sole right of which he had been deprived was "his right under Section 7 of the Act to join, or refrain from joining, any labor organizations". The Board agreed with its trial examiner that

> "The refusal of the pickets led by Johnson to permit George W. Bryant to continue with his work of unloading the timber on his truck because Bryant did not have a sticker on his truck indicating union membership, clearly deprived Bryant of his right under Section 7 of the Act to join, or refrain from joining, any labor organization". (B. A. 86).

The Board found that this was "the only violation of Section 8(b)(1)(A) of the Act by the Respondents", and dismissed the complaint "insofar as it alleges violations of Section 8(b)(1)(A) other than the one found herein". (B. A. 86, 89). In the Court of Appeals the Board argued (brief, p 26) that petitioner had violated Section 8(b)(1)(A) of the Act by "Refusing to Permit Employee George Bryant to Unload his Truck". Nevertheless the Court of Appeals has ordered petitioners to abide by and perform the directions of paragraph 1(b) of the Board's order which requires that petitioners cease and desist from "Restraining or coercing employees in the exercise of the rights guaran-

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20. B. A. 5; Complaint, paragraph 13. B. A. 5 shows the complaint to read, in part, "in order to compel said *employers* to join or assist District 50 or UMW"; but the italicized word "employers" is an error and should read "employees".

teed in Section 7 of the Act".[21] (B. A. 89). Neither the Intermediate Report of the trial examiner nor the Board's Decision and Order makes any finding or conclusion that the blanket cease and desist order is necessary under the circumstances of the case.

Paragraph 1.(b) is limitless in its requirement that petitioners obey Section 8(b)(1)(A) and lacks specificity both as to the acts which petitioners are to refrain from doing and as to employees encompassed; and its enforcement restrains petitioners from unfair labor practices in which they have not been found to have engaged and which are unrelated to any proven unfair labor practices. Though the Board rejected as violations of Section 8(b)(1)(A) some of the acts found by the trial examiner to constitute such violations, the Board adopted the examiner's recommendation that petitioners be enjoined from "Restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act". Both in their exceptions filed with the Board (B. A. 73, 75) and before the Court of Appeals, petitioners contended that this was a blanket cease and desist order, unsupported by, and contrary to, the Board's findings of fact, the substantial evidence on the record considered as a whole, and unwarranted under the complaint and other pleadings, motions, and all other proceedings, and that such order is beyond the power and jurisdiction granted to the Board under Section 10(c) of the Act.

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21. The Board's order, as contained in paragraph 1(b), adopts the recommendation of its trial examiner. (B. A. 48-49). Petitioners objected to the Board that such recommendation constituted a blanket cease and desist order and therefore was beyond the power and jurisdiction of the Board. (B. A. 75).

d. In Relation to the Notice to be posted.

Paragraph 2 of the Board's order requires petitioners to

take affirmative action, which under subparagraph (a) thereof includes the execution and posting of copies of the notice attached to the Board's order (B. A. 89-91), the language of which notice follows the contents of the Board's order in paragraph 1.(a)(1), (2) and (3) and includes the matters to which petitioners have herein objected. Subparagraph (b) of paragraph 2, requires petitioners to a Board Regional Director their steps of compliance.

THE COURT OF APPEALS' DECISION

Upon petition by the Board for enforcement of its order, the Court of Appeals on July 18, 1952, issued its opinion (R. A. 95, 96) which it concluded with the words "Order Enforced". Erroneously stating that the "unfair labor practices consisted of interfering with employees of timbermen" delivering timbers to Carbon, it agreed that, with reference to violations of Section 8(b)(4)(A) and (B), the evidence sufficed to support the Board finding that petitioners picketed Carbon's premises to compel (1) Carbon to cease doing business with timbermen "who would not join respondent's union or the association," (2) to compel timbermen to join "the union and the association," and (3) the timbermen to recognize "the union" as their employees' representative. It concluded also the evidence ample that petitioners had violated Sec. 8(b)(1)(A) "by coercion exercised by one Bryant, an employee of one of the timbermen." Although the Board had made no finding that an order broader than its findings of fact was required, the Court of Appeals, summarily rejected petitioners' contentions that the Board's order was too broad and exceeds the Board's power and jurisdiction granted to it under the Act, and particularly Section 10(c) thereof, and the limitations which the federal judiciary has imposed upon the Board's power and jurisdiction to issue cease and desist orders.

Contrary to and unsupported by the substantial evidence on the record considered as a whole, and contrary to and unsupported by the findings of the Board, and erring as a matter of law, and, as petitioners assert, beyond its jurisdiction and authority, the Court of Appeals, in its brief but total discussion of petitioners' contentions, declared:

> "It is argued that the order is too broad; but in view of the wide background of violence and intimidation which the record discloses and the program of which it was a part, we think that this contention is without merit." (R. A. 96),

when there was no violence and the Board, in its brief in the Court of Appeals, did not contend that there was; when the only intimidation which the Board found related solely to the Timbermen and to the one employee, Bryant; when the Board in its brief (p. 5) recognized that "the geographical bounds of" petitioners' union activity was restricted to Region 23, which, under the undisputed evidence, was shown to be confined to six counties (Mason, Putnam, Kanawha, Clay, Boone, and a part of Fayette) in West Virginia; and when the undisputed evidence shows that both the act of encouragement and inducement found by the Board to constitute a violation of Section 8(b)(4)(A) and (B) and the act of restraint and coercion found by the Board to be an infraction of Section 8(b)(1)(A) occurred at Carbon's premises in the southeast portion of Kanawha County. (B. A. 110), and when UCW's program was only to organize the timber workers in Region 23. (B. A. 157).

QUESTIONS PRESENTED

This case presents the following questions:

1. Whether paragraph 1.(a) of the Board's order, enforced by the Court, which requires petitioner's to cease and desist from:

> "(a) Inducing and encouraging the employees of Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or commodities, or to perform any services for their respective employers, . . .",

in relation to each of the objects set forth in subdivisions (1), (2) and (3), of said paragraph, is too broad, and whether it exceeds the Board's power, authority and jurisdiction granted to it under Section 10(c) of the Act, and whether it should be modified and limited to inducing and encouraging by picketing and to the employees of Carbon Fuel Company where petitioners are claimed to have induced and encouraged employees in violation of Section 8(b)(4) of the Act only by picketing, and where petitioners are claimed to have violated said section only as to employees of Carbon Fuel Company and the Board's findings are expressly limited to picketing and the employees of said employer, and where the Board has made no finding of fact of the necessity for a broad order.

2. Whether that portion of paragraph 1.(a) of the Board's order, enforced by the Court, reading:

> ". . . where an object thereof is (1) to force or require *any employer or self-employed person* to join *any labor or employer organization*", is too broad and exceeds the Board's power, authority and jurisdiction granted to it under Section 10(c) of the Act, and whether

> (a) The italicized words *"any employer or self-employed persons"* should be modified and limited

to the 5 Timbermen (C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) where the complaint, issues, evidence and Board's findings of fact were so limited;

(b) The italicized words *"any . . . labor organization"* should be modified and limited to UCW where the Board's findings of fact were so limited or, at most, to UCW and District 50 to conform with the limits of the complaint; and

(c) The words *"any . . . employer organization"* should be modified and limited to Central West Virginia Lumbermen's Association where the complaint, issues, evidence and Board's findings of fact were so limited;

and where the Board has made no finding of fact of the necessity for a broad order as to either (a), (b) or (c), *supra.*

3. Whether that portion of paragraph 1(a) of the Board's order, enforced by the Court, reading:

". . . (2) to force or require Carbon Fuel Company *or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) or other person* to cease using, selling, handling, transporting or otherwise dealing in the products of C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman and George T. Wright; . . ."

is too broad and whether it exceeds the Board's power, authority and jurisdiction granted to it under Section 10(c) of the Act, in its inclusion of the italicized words *"or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) or*

other person" and whether such italicized words should be stricken therefrom, where the complaint, issues, evidence and Board's findings of fact are expressly limited to Carbon Fuel Company and where the Board has made no finding of fact of the necessity for a broad order.

4. Whether paragraph 1.(b) of the Board's order, enforced by the Court, which requires petitioners to cease and desist from:

> "Restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act"

is too broad, and whether it exceeds the Board's power and jurisdiction granted to it under Section 10(c) of the Act, where the Board has found that petitioners have restrained or coerced only one employee of one employer and where the Board has found further that such employee's rights have been violated only with respect to his right to join or not to join a labor organization, and where the Board has dismissed the complaint insofar as it alleges violations of Section 8(b)(1)(A) "other than the one found" by the Board, and where the Board has made no finding of fact of the necessity for a broad order.

6. Whether paragraph 2., subparagraphs (a) and (b) of the Board's order, which the Court has ordered enforced, are too broad and exceed the Board's power, authority and jurisdiction granted to it under Section 10(c) of the Act, and should be limited and modified in the manner and to the extent set forth in questions 1 to 5, inclusive.

7. Whether the scope of the Board's order, as enforced by the Court, is supported by its findings of fact and by the substantial evidence on the record considered as a whole.

8. Whether the Court of Appeals has the power and authority under Section 10(e) to make a finding and conclusion as a predicate for enforcing a Board order whose scope is broader than the Board's findings of fact where the Board itself has not made a finding of fact of the necessity for a broad order.

9. Whether the Court of Appeals' finding and conclusion that the Board's order was justified "in view of the wide background of violence and intimidation which the record discloses and the program of which it was a part" is supported by, and is contrary to, the substantial evidence on the record considered as a whole; and whether such justification, when considered with the undisputed facts, warrants the Court's enforcement of the order, without modification.

10. Whether the Court of Appeals erred, as a matter of law, in enforcing the Board's order without modifications.

11. Whether the Court erred in stating "The unfair labor practices consisted in interfering with employees of timbermen", delivering mine timbers to Carbon Fuel Company, when such language is unsupported by, and is contrary to, the Board's findings and the substantial evidence on the record considered as a whole.

REASONS FOR ALLOWANCE OF THE WRIT

1. The Court of Appeals for the Fourth Circuit, in enforcing that portion of the Board's order which related to the Board's finding that petitioners had violated Section 8(b)(1)(A) of the Act and which requires petitioners to cease and desist from "Restraining and coercing employees in the exercise of rights guaranteed to them under Section 7 of the Act" imposes upon labor unions and their agents (petitioners herein) an injunction broadly to obey the statute [Section 8(b)(1)(A)], a requirement condemned

by, and in conflict with, this Court's pronouncements in *National Labor Relations Board* v. *Express Publishing Company*, 312 U. S. 426; *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376; and *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217; and which other federal Courts of Appeals have likewise rejected, in cases involving the issue of enforcing blanket cease and desist Board orders against employers found guilty of violating the rights of employees guaranteed under Section 7. See:

NLRB v. *Reliable Newspaper Delivery, Inc.*, 3 Cir., 187 F. 2d 547, 550; *NLRB* v. *Newark Morning Ledger Co.*, 3 Cir., 120 F. 2d 262, 269; *NLRB* v. *Cleveland-Cliff Iron Co.*, 6 Cir., 133 F. 2d 295, 302; *NLRB* v. *Armour & Co.*, 10 Cir., 154 F. 2d 570, 577-578; *Joy Silk Mills* v. *NLRB*, D. C. Cir. 185 F. 2d 732, 745; *NLRB* v. *Servel, Inc.*, 7 Cir., 149 F. 2d 542, 544; *NLRB* v. *Gluek Brewing Co.*, 8 Cir. 144 F. 2d 847, 857; *NLRB* v. *Walt Disney Productions*, 9 Cir., 146, F 2d 44, 50; *NLRB* v. *National Biscuit Co.*, 3 Cir., 185 F. 2d 123, 124; *NLRB* v *Ford Motor* Co., 5 Cir., 119 F. 2d 326; and *NLRB* v. *Consolidated Machine Tool Corp.*, 2 Cir., 163 F. 2d 376, 379.

In the instant case the Fourth Circuit has impacted upon labor unions and their agents the requirements of obedience, with possibility of contempt penalties if violated, to a limitless Board order, lacking specificity both as to the acts which petitioners are to refrain from doing and the employees emcompassed, in contrast to that Court's prior refusal to impress upon an employer such requirement to a Board order broader than the factual basis warranted. *National Labor Relations Board* v. *A. S. Abell Co.*, 4 Cir., 97 F. 2d 951. The Fourth Circuit has thus decided an important federal question, and one which is particularly substantial and of importance to labor unions, their agents and

members, in a manner which not only conflicts with prior and applicable decisions as aforesaid, but its judgment and decree, if permitted to stand, furnish precedent and pattern to be utilized against labor unions and their agents, which are variant from those which have been juridically-declared applicable and applied in the enforcement of Board orders against employers found guilty of comparable violations of employees' rights under Section 7 of the Act. Moreover, the Fourth Circuit's judgment and decree, if permitted to stand, afford the Board and federal Courts a judicial sanction for applying against labor unions and their agents standards for the permissible scope of Board orders which this Court and federal Courts of Appeals, other that the Fourth Circuit, have, in the enforcement of Board order against employers, declared to be beyond the Board's power, authority and jurisdiction as granted by Section 10(c) of the Act. If such cases are not applicable to the instant proceeding because labor unions and their agents, rather than employers, are involved, then this is an important question of federal law which has not been, but should be, settled by this Court.

2. Where the Board has sought enforcement of its order against an employer, federal courts have denied enforcement insofar as the order exceeded the subject matter of the complaint on the ground that the Board was without jurisdiction to make an order broader than such subject matter. *Reliance Mfg. Co.* v. *National Labor Relations Board*, 7 Cir., 125 F. 2d 311, 321-322; *National Labor Relations Board* v. *Ford Motor Co.*, 5 Cir., 119 F. 2d 326, 330-331. Where the Board has sought enforcement of its order against an employer this Court has refused to enforce the portions of the Board's order which exceeded its findings of fact based upon substantial evidence on the record

considered as a whole. *National Labor Relations Board* v. *Express Publishing Company*, 312 U. S. 426; *May Department Stores Co.*, v. *National Labor Relations Board*, 326 U. S. 376; *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217. In the instant case, the Court of Appeals for the Fourth Circuit, contrary to and in conflict with such cases, *Shell Oil Co.* v. *NLRB*, 5 Cir., 196 F. 2d 637, *NLRB* v. *Consolidated Machine Tool Corp.* 2 Cir., 163 F. 2d 376, 379, and cases cited above under Reason 1 for granting the writ, in enforcing that portion of the Board's order which relates to its findings that petitioners violated Section 8(b)(4)(A) and (B), directs obedience to a blanket cease and desist order in that

(1) it requires petitioners to cease and desist from inducing and encouraging employees of all employers (other than the five Timbermen) to engage in a strike, thereby exceeding the subject matter of the complaint, as well as the Board's findings;

(2) it interdicts such inducement and encouragement in any form thereof although the Board's findings relate to the commission of one form only, namely, picketing.

(3) It interdicts such inducement and encouragement where an object thereof is "to enforce or require any employer or self-employed person to join any labor or employer organization" whereas the complaint limited the labor organizations to UCW or District 50 and the Board's finding was limited to the Association; and

(4) it interdicts such inducement and encouragement where another object thereof is to force or require any employer (other than the five Timbermen) "or other person" to cease using, etc. products of the five Timbermen, whereas both the complaint and

the Board's findings limit such object to forcing or requiring one employer only, namely, Carbon.

Nor are these contentions negated by *Inter. Bro. of Electrical Workers* v. *NLRB*, 341 U. S. 694, 705-6, wherein this Court rejected a broad order because an order restricted to the secondary employers involved would leave the primary employer "and other employers who do business with him exposed to the same type of pressure through other comparable channels". This rationale is not apposite to the circumstances of the instant proceeding where it is undisputed that substantially all of the timber products of the 5 Timbermen is sold to Carbon and where, in the Board's order, its broad sweep relates not only to the object of causing employers to cease doing business with a primary employer, as in the *IBEW* case, but also where additional objects found by the Board are "(1) to force or require any employer or self-employed person to join any labor or employer organization" and "(3) to force or require" the 5 Timbermen to recognize or bargain with UCW or District 50 to recognize or bargain with UCW or District 50 "as the representative of their employees unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act."

In the instant case, the Circuit Court of Appeals for the Fourth Circuit, contrary to and in conflict with said decisions entered against employers has applied to a Board order against labor unions and their agents a rule contrary to the rule established by this Court for enforcing Board orders against an employer found guilty of the commission of unfair labor practices. If such cases are not applicable because labor unions and their agents, and not an employer,

are involved, then there is thus presented a federal question of general and grave importance, particularly to every labor union, their agents and their members, and this Court should settle the question whether Section 10(c) of the Act empowers the Board to enter an order against labor unions and their agents broader than the subject matter of the complaint and in excess of the Board's findings of fact based upon substantial evidence upon the record as a whole and whether a Court of Appeals is authorized under Section 10(e) of the act to enforce such Board order.

3. Although the Board made no finding of fact that a broad order was necessary, the Court of Appeals for the Fourth Circuit made such a finding in order to justify the breadth of the Board's order. Thereby it contravened its authority and jurisdiction under Section 10(e) of the Act, as well as Board authority granted under Section 10(a) and (c) thereof, and this Court's pronouncement in *NLRB* v. *Crompton--Highland Mills, Inc.*, 337 U. S. 217, 220, that a court of appeals' decree of enforcement "should be based upon such part, or all, of the Board's cease and desist order *as is supported by its findings of fact*". (Italics supplied). Moreover, the Court's justification for the broad order is not supported by, but is contrary to, the substantial and undisputed evidence on the record considered as a whole. The Court justified the broad order because of "the wide background of violence" when there was no violence and the Board did not contend that there was; and because of the intimidation which the record discloses, when the only intimidation found by the Board related only to the Timbermen and to the employee, Bryant; and because of the "program of which it was a part", when the Board recognized that "the geographical bounds of" petitioners' activities was restricted to Region 23, shown to be confined to six counties in West Virginia, and the undisputed evidence shows

that the act of encouragement and inducement and the act of restraint, found by the Board to constitute violations of the Act, occurred at Carbon's premises in the southeast portion of one county. Likewise unsupported by, and contrary to, the Board's findings of fact and said evidence is the Court's statement that "The unfair labor practices consisted in interfering with employees of timbermen" delivering mine timbers to Carbon.

Wherefore, Your Petitioners, and each of them, pray that a writ of certiorari issue to the United States Court of Appeals for the Fourth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court of Appeals had in the case numbered and entitled on its docket as No. 6433, National Labor Relations Board, Petitioner, v. United Construction Workers, Affiliated with United Mine Workers of America; District 50, United Mine Workers of America; and Charles A. Neal, Elza Johnson and Sherman Blackshire, Respondents, to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States, that the judgment and decree of said United States Court of Appeals herein complained of, entered on July 18, 1952 (R. A. 97), be reversed and set aside by this Court, and that said petitioners may have such further relief as to this Court may seem proper.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No.....

United Construction Workers, Affiliated with United Mine Workers of America; District 50, United Mine Workers of America; Charles A. Neal, Elza Johnson and Sherman Blackshire, *Petitioners*,

vs.

National Labor Relations Board.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

NOTE

The term "petitioners" used herein refers to United Construction Workers, Affiliated with United Mine Workers of America, District 50, United Mine Workers of America, and Charles A. Neal, Elza Johnson and Sherman Blackshire.

Petitioner, United Construction Workers, Affiliated with United Mine Workers of America, will be referred to herein as "UCW", and Petitioner, District 50, United Mine Workers of America, as "District 50". Other abbreviations used herein correspond with those used in the petition.

A. OPINION BELOW

The opinion of the Court of Appeals appears at page 95 of the Appendix to respondent's brief. It is not reported. The Intermediate Report of the Trial Examiner (B. A. 27) and the Board's Decision and Order (B. A. 82) are reported at 94 NLRB 1731.

B. JURISDICTION

The Circuit Court of Appeals entered its judgment and decree on July 18, 1952. (R. A. 97). The jurisdiction of this Court is invoked under Title 28, U. S. C., Secs. 1254(1) and 2101(c) [Act of June 25, 1948, chap. 646, 62 Stat. 928, 961, 962, amended May 24, 1949, chap. 139, Sec. 106, 63 Stat. 104], and Section 10(e) of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, chap. 120, Title I, Section 101, 61 Stat. 146, amended June 25, 1948, chap. 648, Sec. 32, 62 Stat. 991).

C. STATEMENT OF THE CASE

A statement of the case appears in the preceding Petition for Writ of Certiorari (pp. 3-24), which is hereby adopted and made a part of this brief.

D. SPECIFICATION OF ERRORS

1. The Court of Appeals erred in ordering the enforcement of paragraph 1.(a) of the Board's order, and in failing and refusing to order that the provisions of said paragraph concerning inducing and encouraging of employees should be modified so that such provisions, in their relation to each of the objects set forth in subdivisions (1), (2) and (3) of said paragraph, would be limited to the employees of Carbon Fuel Company.

2. The Court of Appeals erred in ordering the enforcement of paragraph 1.(a) of the Board's order, and in failing and refusing to order that the provisions of said paragraph concerning inducing and encouraging of employees should be modified so that such provisions, in their relation to each of the objects set forth in subdivisions (1), (2) and (3) of said paragraph, would be limited to picketing.

3. The Court of Appeals erred in ordering the enforcement of paragraph 1.(a)(1) of the Board's order, and in failing and refusing to order that said paragraph be modified so that the words "any employer or self-employed persion" in subdivision (1) of said paragraph 1.(a), should be stricken and said subdivision limited to the five Timbermen (C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright).

4. The Court of Appeals erred in ordering the enforcement of paragraph 1.(a)(1) of the Board's order, and in failing and refusing to order that said paragraph be modified so that the words "any labor or employer organization" should be stricken and said subdivision limited to UCW or at most to UCW and District 50 and the Central West Virginia Lumberman's Association.

5. The Court of Appeals erred in ordering the enforcement of paragraph 1.(a)(2) of the Board's order, and in failing and refusing to order that said paragraph be modified so that the words "Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) or other person" in subdivision (2) of paragraph 1.(a) should be stricken and in lieu thereof that said subdivision be limited to one employer, namely, Carbon Fuel Company.

6. The Court of Appeals erred in ordering the enforcement of paragraph 1.(b) of the Board's order, and in fail-

ing and refusing to order that said paragraph be modified so that it would be limited to the one alleged unfair labor practice found by the Board.

7. The Court of Appeals erred in ordering the enforcement of paragraph 1.(b) of the Board's order, and in failing and refusing to order that said paragraph be modified so that it would be limited to the one employee whose right under Section 7 of the Act the Board found to have been violated.

8. The Court of Appeals erred in ordering the enforcement of paragraph 2, subparagraphs (a) and (b) of the Board's order, and in failing and refusing to modify and limit them, and the notice mentioned in said subparagraph (a), in the manner and extent set forth above in Specification of Errors 1 to 7, inclusive.

9. The Court of Appeals erred, as a matter of law, in enforcing the Board's order, without modifications.

10. The Court of Appeals was without power, authority and jurisdiction under Section 10(e) of the Act to make a finding or conclusion as a predicate for enforcing a Board order whose scope is broader than the Board's findings of fact, where the Board itself has not made a finding of fact of the necessity for a broad order. The Court of Appeals erred in making such finding and conclusion.

11. The finding and conclusion of the Court of Appeals that the Board's order is justified "in view of the wide background of violence and intimidation which the record discloses and the program of which it was a part" is not supported by, and is contrary to, the substantial evidence on the record considered as a whole, and the Board's findings of fact. The Court erred in such finding and conclusion, and in enforcing the Board's order without modifications based upon such finding and conclusions.

12. The Court of Appeals erred in stating, in its opinion, that "The unfair labor practices consisted in interfering with employees of timbermen" delivering mine timbers to Carbon Fuel Company.

ARGUMENT

1. THE BLANKET ORDER CONTAINED IN PARAGRAPH 1.(a) OF THE BOARD'S ORDER IS NOT WARRANTED BY THE BOARD'S FINDINGS OF FACT OR BY THE SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE, IS CONTRARY TO LAW, AND BEYOND THE BOARD'S JURISDICTION AND POWER. THE DECREE ENFORCING IT CONFLICTS WITH APPLICABLE DECISIONS BOTH OF THIS COURT AND OTHER COURTS OF APPEALS, THE COURT ERRED IN ENFORCING IT, WITHOUT MODIFICATIONS.

Paragraph 1.(a) of the Board's Order, which the Court of Appeals for the Fourth Circuit has ordered enforced, appears in the Appendix hereto, at p. 62. Petitioners submit it is too broad and exceeds the Board's power and jurisdiction granted to it under the Act, and particularly Section 10(c) thereof, and the limitations which the federal judiciary has imposed upon the Board's power and jurisdiction to issue blanket orders.

a. Paragraph 1.(a) is a blanket order both as to acts of inducement and encouragement proscribed and as to employees covered.

Although the complaint alleged (B. A. 5), and the Board found (B. A. 84), that petitioners had "induced and encouraged the employees of Carbon", the Board's order is not so limited to employees of that one employer but re-

quires that petitioners cease and desist from inducing and encouraging the employees of every employer—without limitation in its application as to type of industry or as to geographical areas—excepting the five Timbermen specifically named. The Board did not conclude, nor indeed could it have reasonably concluded, from the substantial evidence on the record considered as a whole, that the broad scope of said paragraph 1.(a) was necessary to prevent the petitioners before it "from engaging in any unfair labor practice affecting commerce".

Furthermore, although the Board's conclusion that petitioners violated Section 8(b)(4) is predicated solely upon the alleged picketing of Carbon's employees, paragraph 1.(a) requires a cessation of inducement and encouragement of employees *without limitation* of the means employed.

Paragraph 1.(a) should be limited to Carbon's employees

Heretofore in proceedings to enforce Board orders against an employer found guilty of unfair labor practices, this Court has rejected broad cease and desist orders and has declared that a "decree of enforcement should not extend further than necessary to prevent the taking of the prohibited action by the employer." *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217, 226. Likewise, this Court, in *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 433, made it clear that the Board is without authority under Section 10 (c) of the Act "to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct." In that case there appears the juridical declaration that "Congress did not contemplate that the courts should, by contempt proceedings, try alleged violations of the National Labor Relations Act not in controversy and not found by the Board and which

are not similar or fairly related to the unfair labor practice which the Board has found." (312 U. S. 435). *May Dept. Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, provided a judicial yardstick for determining the proper scope of a Board Order. Therein this Court declared (at page 390):

> "The test of the proper scope of a cease and desist order is whether the Board might have reasonably concluded from the evidence that such an order was necessary to prevent the employer before it from engaging in any unfair labor practices affecting commerce."

Interpreting and applying these judicial guides, various Courts of Appeals, dealing with broad cease and decease orders of the Board directed against employers, have rendered decisions contrary to the judgment and decree of the Fourth Circuit Court in the instant case. Since the complaint charged that petitioners had "induced and encouraged the employees of Carbon" only, it is pertinent that the Fifth and Seventh Circuits, respectively, have rejected omnibus Board orders upon the ground that the Board has no jurisdiction and power to make an order broader than the subject matter. *National Labor Relations Board* v. *Ford Motor Co.*, 5 Cir., 119 F. 2d 326; *Reliance Mfg. Co.* v. *National Labor Relations Board*, 7 Cir., 125 F. 2d 311. Where Courts of Appeals were concerned with enforcement of Board orders against employers with multiple-plant operations, they rejected the Board's contentions that its order should be made applicable to plants other than those at which the unfair labor practices were committed. *Reliance Mfg. Co.* v. *National Labor Relations Board*, *supra* at p. 321; *Shell Oil Co.* v. *National Labor Relations Board*, 5 Cir., 196 F. 2d 637 (1952); *National Labor Relations Board* v. *Ford Motor Co.*, *supra* at pp. 330-331. Where the Second Circuit

found that an employer's unfair labor practice was restricted to its pattern-maker employees, that Court of Appeals so limited the Board's order, declaring that its injunction "should not go beyond the threatened danger." *National Labor Relations Board* v. *Consolidated Machine Tool Corp.*, 2 Cir., 163 F. 2d 376, 379.

The Board itself has recognized the juridically-declared limitation upon its authority and rejected the contention for a district-wide injunction against a labor union where it found that the alleged wrongful conduct "so far as the evidence shows" was confined to one employer's operation. *Bitner Fuel Company*, 92 NLRB 953, 955, 27 LRRM 1192.

Heretofore judicial approbation of a broad cease and desist order of the Board against a labor union has been based upon specific Board findings that such an order was essential to effectuate the Act's purposes. In *National Labor Relations Board* v. *United Mine Workers of America*, 6 Cir., 195 F. 2d 961, the Sixth Circuit enforced a Board order whose broad sweep covered employees other than those involved in the related incidents but the Court noted that the "*Board found*[22] that the serious danger of future unlawful acts of restraint and coercion existed not only with respect to the six mines but also with respect to other non-union employees engaged in mining within the jurisdiction of District 23." In another instance of a broad order directed against a labor union, the Board predicated such scope upon its findings of an alleged necessity therefor.[23] But in the instant case, as stated in the *Express*

22. Italics supplied.

23. See *Mercury Mining and Construction Corporation*, 96 NLRB No. 216 29 LRRM 1043, 1045, where the Board finds that "a real danger of future commission by the Respondents of the same unlawful acts may reasonably be anticipated" not only as to the employees involved in the proceeding but also as to other employees, but limited to employees in the mining industry within the organizing jurisdiction of the Respondent District 2.

Publishing Company case, *supra* at p. 434, "Here the Board made no finding based either on the specific circumstances disclosed by the record or on its own expert judgment" to serve as a requisite foundation for including in its order the employees of any employer other than Carbon Fuel Company. Its order should be so limited.

Nor is *International Bro. of Electrical Workers*, etc. v. *National Labor Relations Board*, 341 U. S. 694, apposite to the circumstances of the instant case. Distinguishing the two cases is the fact that whereas in the *IBEW* case the Court justified the broad order upon the fact that a limited order would leave the primary employer (Langer) and other employers who do business with him "exposed to the same type of pressure through other comparable channels" (341 U. S. 705-706), in the instant case the undisputed facts show that the primary employers (namely, the five Timbermen) sell substantially their entire output to the one employer, namely, Carbon. Moreover, as pointed out in the petition (pp. 17-20), the order in the instant proceeding concerns objects of inducement and encouragement not considered in the *IBEW* case.

It is thus clear that the alleged unfair labor practice found by the Board to be in violation of Section 8(b)(4) is effectively remedied by an order restricted to the proscription of inducing and encouraging the employees of Carbon Fuel Company.

The Board, in paragraph 1.(a), also required that petitioners cease in inducing employees to engage in a strike "or to perform any services *for their respective employers.*" The italicized words, for the reasons above given, should be modified and limited to Carbon.

Paragraph 1.(a) should be limited to inducing and encouraging by picketing.

This Court in *International Bro. of Electrical Workers* v. *National Labor Relations Board, supra,* (at page 701) declared that the words "induce and encourage" found in Section 8(b)(4) of the Act "are broad enough to include in them every form of influence and persuasion". The Board's findings of fact that Section 8(b)(4) has been violated related solely to acts of picketing.[24] Yet, contrary to the pronouncements of this Court hereinbefore discussed rejecting blanket cease and desist orders, paragraph 1.(a) of the Act proscribes every form of inducement and encouragement. Petitioners assert that such order should be restricted, consonant with the Board's findings and with this Court's pronouncements in the *Express Publishing Company, May Department Stores Company* and *Crompton-Highland Mills,* Inc., cases *all supra,* to the act of picketing.

The broad sweep of the provisions concerning inducing and encouraging of employees relate to each of the objects set forth in subdivisions (1), (2) and (3) *of paragraph* 1.(*a*) *of the Board's order.*

The provisions of paragraph 1.(a) of the Board's order concerning inducing and encouraging of employees relate to each of the objects set forth in subdivisions (1), (2) and (3) of said paragraph. In relation to such objects, such provisions require that petitioners cease and desist from

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24. In its brief (p. 13) in the Court of Appeals, the Board argued that "On the basis of the foregoing facts, the Board concluded that respondents violated Section 8(b)(4)(A) and (B) of the Act *by picketing* the premises of Carbon, and *thereby inducing* and encouraging the employees of Carbon to engage in a strike . . . " (Italics supplied)

all forms of inducing and encouraging of all employees of all employers (other than the 5 Timbermen) where the object thereof is

"(1) to force or require *any employer or self-employed person to join any labor or employer organization*";

"(2) *to force or require Carbon Fuel Company or any employer*" (other than the 5 Timbermen) "*or other person*" to cease using, etc. or otherwise dealing in the products of said 5 Timbermen;

"(3) to force or require" the 5 Timbermen to recognize or bargain with UCW or District 50 as *their employees'* representatives unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act".

When the broad sweep of the provisions concerning inducing and encouraging of employees are read with the provisions relating to the respective objects set forth in said subdivisions (1), (2), and (3), the blanket characteristic of the order is even more apparent. Not only are the inducement and encouragement provisions too broad as they relate to each of said subdivisions, but likewise the portions of paragraph 1.(a) found in subdivisions (1) and (2) thereof are too broad. Discussion thereof follows:

b. The object contained in subdivision (1) of paragraph 1.(a) is too broad and should be restricted to the Timbermen, UCW and the Association.

Although the complaint alleges that one of petitioners' objects in inducing and encouraging Carbon's employees to strike was "to force or require Huffman, Saul and Lynch to join UCW or District 50 and Central West Virginia Lum-

bermen's Association", and although limitations of both the timbermen involved and the employee and employer organizations involved in the proceedings are reflected in the Board's findings of fact that such object was "forcing or requiring Timbermen as employers and as self-employed persons to join" UCW and the Association, no such limitations are included in paragraph 1.(a)(1) of the Board's order which, ignoring such allegations and findings, orders petitioners to cease and desist where an object of inducement and encouragement is "to force or require any employer or self-employed person to join any labor or employer organization". Thus the Board has employed, contrary to the cases hereinbefore cited dealing with broad cease and desist orders, substantially the same words found in Section 8(b)(4)(A) of the Act.[25]

Not only is paragraph 1.(a)(1) in contravention of the allegations and findings, but at the inception of the hearing before the Board's trial examiner, the Board's General Counsel's counsel, upon petitioners' motion for particularization, specifically enumerated the timbermen involved in the proceedings to the five Timbermen: Huffman, Saul, Lynch, Foreman and Wright (R. A. 14-15). Petitioners assert that paragrah 1.(a)(1) should be limited and modified and that the term "any employer or self-employed person" should be restricted to the five Timbermen, that the term "any labor organization", consistent with the Board's findings should be restricted to UCW, and that the term "any employer organization" should be limited to the Association.

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25. Section 8(b)(4)(A) proscribes conduct where an object thereof is "*forcing or requiring any employer or self-employed person to join any labor or employer organization*". (Italics supplied)

c. The object contained in subdivision (2) of paragraph 1.(a) is too broad and should be modified and limited to Carbon Fuel Company.

The object of inducement and encouragement found in Paragraph 1.(a)(2) is too broad and should be limited in scope to Carbon Fuel Company. The complaint alleged (B. A. 5) and the Board found (B. A. 84) that another of petitioners' objects for inducing and encouraging Carbon's employees to strike was to force or require Carbon to cease doing business with the five Timbermen. The Board's order, however, is not so limited. It enjoins inducement and encouragement to strike where the object is to force or require "Carbon Fuel Company or any employer" (other than the five Timbermen) "or other person" to cease using, etc. the products of the five Timbermen. Thus, paragraph 1.(a)(2) is, in effect, a blanket cease and desist order and contravenes the decisions hereinbefore discussed.

Not only does the paragraph's language exceed both the allegations of the complaint and the findings of the Board, and is without factual predicate or Board finding for the necessity of going beyond such allegations and findings, but the undisputed evidence in the case demonstrates conclusively that it is wholly unwarranted both in fact and in law. Since it is obvious that in the object portion of the paragraph, the Board seeks to protect the five Timbermen[26]—and they alone—from the objectives of secondary pressure, and since the undisputed evidence shows that these five Timbermen sell substantially all their products to Carbon, petitioners submit that, upon *the circumstances of* the instant case, there is neither warrant nor necessity

26. The paragraph specifically designates Huffman, Lynch, Saul, Foreman and Wright.

for extending the injunction beyond the complaint and the Board's findings.

Both the substantial evidence on the record considered as a whole and the Board's findings of fact show that the modifications and limitations discussed are both apropriate and required. Under the cases above cited, said paragraph 1.(a) is beyond the Board's power and jurisdiction granted under Section 10(c) of the Act and in conflict with such cases. To hold otherwise would apply to the Board order against labor unions and their agents a rule contrary to that established by this Court for enforcing Board orders against an employer found guilty of unfair labor practices. Petitioners submit that the Court of Appeals erred as a matter of law in enforcing the Board's order without such modifications and limitations.

II. PARAGRAPH 1.(b) OF THE BOARD'S ORDER IS A BLANKET ORDER RESTRAINING PETITIONERS FROM VIOLATING SECTION 8(b)(1)(A) OF THE ACT. IT IS NOT SUPPORTED BY THE BOARD'S FINDINGS OF FACT OR BY THE SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE, IS CONTRARY TO LAW AND BEYOND THE BOARD'S JURISDICTION AND POWER. THE DECREE ENFORCING IT CONFLICTS WITH APPLICABLE DECISIONS BOTH OF THIS COURT AND OTHER COURTS OF APPEALS. THE COURT OF APPEALS ERRED IN ENFORCING IT WITHOUT MODIFICATIONS.

In the petition (pp. 13-14) are set forth the facts upon which the Board found that petitioners had violated Section 8(b)(1)(A) of the Act, as well as a discussion of the scope of the Board's order relating thereto. It is sufficient, petitioners believe, to note that the Board expressly found that

only one incident, restricted to one right under Section 7 of the Act, and involving one employee of one employer was in anywise involved in the commission of the unfair labor practice violating said section, that the Board itself found that "the only violation of Section 8(b)(1)(A) of the Act by the Respondents was their coercive conduct with respect to Bryant" (R. A. 86) and that the Board's order (R. A. 89) dismisses the complaint "insofar as it alleges violations of Section 8(b)(1)(A) other than the one found herein". Yet paragraph 1.(b) of the Board's order, in language precisely paralleling that of Section 8(b)(1)(A), which the Court of Appeals has ordered enforced, requires petitioners to cease and desist from "Restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act".

Herein (p. 39 et seq.) petitioners have discussed the decisions of this Court and Courts of Appeals which have rejected blanket cease and desist orders of the Board where they have been directed against employers and against labor unions. In no case which petitioners' counsel have been able to locate involving, as does the instant case, an order dealing with a violation of Section 8(b)(1)(A) or Section 8(a)(1) has any Court been willing to enforce a Board order as limitless, comprehensive and all-embracing as the Fourth Circuit has endorsed in the instant case. When said Court of Appeals orders that petitioners cease and desist from "Restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act", it tells the petitioners "broadly to obey the statute" [Section 8(b)(1))(A) of the Act]. This is precisely what this Court condemned in the *Express Publishing Company* case, *supra* at p. 435, in express and unequivocal language:

> "But the mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to

> obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that which he was originally charged . .

and asserted to be beyond the Board's authority and jurisdiction under Section 10(c) of the Act.

Also applicable are the *May Dept. Stores Co.* and *Cromton-Highland Mills, Inc.* cases, *supra.*

Paragraph 1.(*b*) *should be limited to Bryant or at most to employees of the five Timbermen.*

Paragraph 1.(b) contains no limitation of employees within its coverage. It is applicable to every employee within the definition of that term in the Act.[27] When the Fourth Circuit was confronted with enforcement of a Board order against an employer, it readily refused to incorporate within its decree that portion of the Board's order for which the "factual basis . . . does not exist". *National Labor Relations Board* v. *A. S. Abell Company*, 4 Cir., 97 F. 2d 951. Yet, in the instant case, where that Court's enforcement decree is directed against labor unions and their agents, and despite the absence of a Board conclusion "from the evidence that such an order was necessary"[28] and where the Board itself has specifically declared that only one employee's right had been affected and in only one instance and it dismissed the complaint as to all other allegations that Section 8(b)(1)(A) had been violated,[29] and without factual basis therefor, the Fourth Circuit readily enforced the blanket cease and desist order without limiting the scope thereof to the one employee

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27. Section 2(3) of the Act.
28. *May Dept. Stores Co.* v. *National Labor Relations Board*, *supra*, at p. 390.
29. In a proceeding charging an employer with interfering with employees' rights, the Board refused to issue a cease and desist order for an isolated incident, holding that it was an insufficient basis for an order. *Sunray Oil Corp.*, 82 NLRB 942 (1949), 23 LRRM 1681.

(Bryant) whose right the Board had found to have been invaded, or limiting to employees of Bryant's employer (Huffman), or limiting it to the employees of the five Timbermen, to geographic area or to the timber industry, but in the exact and comprehensive language of Section 8(b)(1)(A) it requires that petitioners cease "Restraining and coercing employers in the exercise of the rights guaranteed in Section 7 of the Act."

It has been demonstrated herein that Courts of Appeals, other than the Fourth Circuit, have refused to enforce Board orders directed against employers where such orders embraced employees beyond the subject of the complaint the evidence and the Board's findings. *National Labor Relations Board* v. *Consolidated Machine Tool Corp., supra* at p. 379; *National Labor Relations Board* v. *Reliable Newspaper Delivery, Inc.*, 3 Cir., 187 F. 2d 547, 550, wherein (footnote 4) the Court stated:

> "If the Board had intended to include all the other non-union employees allegedly similarly situated, the complaint should have been amended accordingly, notice given to respondent and sustaining proof introduced . . . "

In *National Labor Relations Board* v. *May Dept. Stores Co.*, 8 Cir., 146 F. 2d 66, 71, the Court modified a Board order by restricting its application to "employees in the busheling rooms and not to the other employees in the store of respondent". Where appellate courts have enforced broad cease and desist orders against a labor union, such enforcement decrees (1) have been predicated upon Board conclusions and determination that the necessity therefor existed and (2) have not been made applicable to employees without some limitations of coverage. In *National Labor*

Relations Board v. *United Mine Workers of America*, 6 Cir., 195 F. 2d 961, the order enforced was limited to the employees of the six mines involved in the proceedings and "to other non-union employees engaged in mining within the jurisdiction of District 23". Indeed this was the scope of the order as prepared by the Board, which, in another case (*Mercury Mining and Construction Co.*, 96 NLRB No. 216, 29 LRRM 1043, 1045,[30] it followed the same pattern of limitations and restricted its scope to "employees engaged in mining operations everywhere within the organizing jurisdiction of District 2".

Paragraph 1.(*b*) *of the Board's Order should be limited to the one activity upon which the Board found that Petitioners had violated Section* 8(*b*)(1)(*A*) *of the Act.*

The Board found that "The refusal of the pickets led by Johnson to permit George W. Bryant to continue with his work of unloading the timber on his truck because Bryant did not have a sticker on his truck indicating union membership, clearly deprived Bryant of his right under Section 7 of the Act to join, or refrain from joining, any labor organizations". (B. A. 86). Although this right is but one of the rights guaranteed to employees under Section 7 of the Act,[31] the Court of Appeals has directed that petitioners not restrain or coerce "employees in the exercise of the rights guaranteed in Section 7 of the Act". Hence, in addition to paragraph 1.(b) being a blanket order as to employees, it is likewise a blanket order as to the activity proscribed. It orders petitioners broadly to obey the statute, although there is no contention that Section 8(b)(1)

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30. The Board decided the *Mercury Mining and Construction Co.* case subsequent to deciding the instant one.

31. For the complete text of Section 7 of the Act, see p. 59 of the Appendix hereto.

(A) has been violated other than in the matter of one right, and despite the fact that there are no other violations in controversy and the Board has not found that the commission of unfair labor practices with relation to such rights would be similar or fairly related to the one unfair labor practice which the Board has found. The Court of Appeals requires obedience to a Board order totally at variance with the decisions of this Court in *Express Publishing Co.*, *May Department Stores Co.*, and *Crompton-Highland Mills, Inc.*, cases, *all supra.* In proceedings against employers, under postures similar to the instant proceeding, this Court has refused to enforce a Board order beyond the features or activities upon which the Board based its findings that the employers had committed unfair labor practices. *Express Publishing Co.*, *May Dept. Stores Co.*, *Crompton-Highland Mills, Inc.*, cases, all *supra.* Where the Board found that an employer had been guilty of a single isolated act against a single employee, the Third Circuit held that "the entry of a blanket order to cease and desist from all violations of the Act is not justified". *National Labor Relations Board* v. *Newark Morning Ledger Co.* 3 Cir., 120 F. 2d 262, 269. The Sixth Circuit, striking from a Board order the words "in any other way", declared that it is "undoubtedly the better view that the order should not go beyond the evidence supporting unfair labor practices alleged." *National Labor Relations Board* v. *Cleveland-Cliff Iron Co.*, 6 Cir., 133 F 2d 295, 302. The Tenth Circuit, likewise rejecting a Board order the effect of which was to enjoin an employer from in any manner interfering with, restraining or coercing its emloyees in the various rights guaranteed under Section 7 of the Act, modified the Board order to the one activity which constituted the unfair labor practice. *National Labor Relations Board* v. *Armour & Co.*, 10 Cir., 154 F. 2d 570, 577-578. Similar omnibus portion of Board orders was deleted by the Court of Appeals for

the District of Columbia in *Joy Silk Mills, Inc.* v. *National Labor Relations Board*, D. C. Cir., 185 F 2d 732, 745, by the Fifth Circuit in *National Labor Relations Board* v. *Ford Motor Co., supra* at p. 330-331 and subparagraph (f) on p. 327, by the Seventh Circuit in *National Labor Relations Board* v. *Servel, Inc.*, 7 Cir., 149 F. 2d 542, 544; by the Eighth Circuit in *National Labor Relations Board* v. *Gluek Brewing Co.*, 144 F. 2d 847, 857; and by the Ninth Circuit in *National Labor Relations Board* v. *Walt Disney Productions*, 146 F. 2d 44, 50. In *National Labor Relations Board* v. *National Biscuit Co.*, 3 Cir., 185 F. 2d 123, 124, the Court limited its decree "to specific practices complained against".

Petitioners submit that the substantial evidence on the record considered as a whole and the Board's findings of fact show that the modifications and limitations discussed are both appropriate and required. The broad scope of the Board's order contained in paragraph 1.(a) finds support neither in such evidence nor the Board's findings of fact. Under the cases above discussed, said paragraph 1.(b) is beyond the Board's power and jurisdiction granted to it under Section 10(c) of the Act and is in conflict with such cases. If the Fourth Circuit's judgment and decree are permitted to stand, then there is provided standards for the permissible scope of Board's orders against labor unions and their agents which this Court and other federal tribunals have, in enforcing Board orders against employers, declared to be beyond the Board's power, authority and jurisdiction as granted by said Section 10(c). The Court of Appeals erred as a matter of law in enforcing the Board's order without such modifications and limitations.

III. PARAGRAPH 2. SUBPARAGRAPHS (a) and (b), AND THE NOTICE REQUIRED THEREBY, SHOULD BE MODIFIED AND LIMITED CONSIS-

TENT WITH PETITIONERS' CONTENTIONS RELATING TO PARAGRAPH 1.(a), INCLUDING THE SUBDIVISIONS THEREOF, AND PARAGRAPH 1.(b), OF THE BOARD'S ORDER. THE COURT ERRED IN REFUSING SO TO MODIFY AND LIMIT PARAGRAPH 2, SUBPARAGRAPHS (a) and (b) AND SAID NOTICE, AND IN ENFORCING THEM WITHOUT MODIFICATIONS.

By paragraph 2., subparagraphs (a) and (b), of the Board's order, petitioners are required to execute and post copies of a notice attached to the Board's Order and to notify the Board's Regional Director, Ninth Region, the steps of compliance. (B. A. 89). The Notice (B. A. 89) follows the language of the Board's order which petitioners have herein insisted should be modified and limited. Petitioners contend, too, that said paragraph 2, subparagraphs (a) and (b), and the notice required thereby to be signed and posted, should be modified and limited in manner and extent consistent with petitioners' contentions hereinbefore discussed. The Court of Appeals erred in failing and refusing to make such modifications and limitations, as a matter of law.

IV. THE COURT OF APPEALS ERRED AS A MATTER OF LAW IN ENFORCING THE BOARD'S ORDER WITHOUT MODIFICATIONS FOR OTHER REASONS.

a. Where the Board has not made a finding of fact showing the necessity for a broad order, the Court of Appeals has no jurisdiction and authority to provide a predicate finding and conclusion for a blanket order.

The Board itself made no finding of fact that it was

necessary to issue a blanket cease and desist order either as to the acts found by it to be violative either of Section 8(b)(4)(A) and (B) or Section 8(b)(1)(A); but the Court of Appeals justified the breadth of the order as to each of said sections "in view of the wide background of violence and intimidation which the record discloses and the program of which it was a part". (R. A. 96). "It is not the function of the Court, on review, to act as a fact-finding body. This role has been delegated by Congress to the Board". Rothenberg of Labor Relations, p. 625, in *NLRB* v. *Consolidated Tool Corp.*, *supra*, p. 379, the Second Circuit declared that the choice of remedy appropriate to expunge the effects of unfair labor practices is for the Board, not for the courts. Section 10(e) of the Act authorizes courts of appeals to enter a decree "upon the pleadings, testimony, and proceedings set forth in" the transcript filed by the Board, but not to make a finding and conclusion on which a broad Board order may be justified. In the *Crompton-Highland Mills, Inc.*, case, *supra*, at p. 220, this Court limited the scope of decrees of courts of appeals to "such part, or all, of the Board's cease and desist order as is supported by its findings of fact". By such test, petitioners submit, the modifications and limitations hereinbefore discussed should have been incorporated in the decree of enforcement; and the Court of Appeals erred as a matter of law in enforcing the Board's order without such modifications and limitations.

b. The Court of Appeals' finding and conclusion justifying the breadth of the Board's order are not supported by, and are contrary to, the undisputed and substantial evidence on the record considered as a whole. They do not warrant the blanket cease and desist order enforced by the Court.

The language employed by the Court of Appeals to justify its enforcement of the Board's order in its sweeping terms is noted above. Such justification for the scope of such order is not supported by, but is contrary, to the undisputed and substantial evidence on the record considered as a whole. The evidence contains no evidence of violence and the Board, in its brief in the Court of Appeals, did not contend that violence existed. The only intimidation which the Board found related solely to the Timbermen and to the one employee, Bryant. The Board itself (brief, p. 5) recognized that "the geographical bounds of" petitioners' union activity was restricted to Region 23, which, under the evidence, was shown to be confined to six counties. The undisputed evidence shows that both the act of encouragement and inducement found by the Board to constitute a violation of Section 8(b)(4)(A) and (B) and the act of restraint and coercion found by the Board to be an infraction of Section 8(b)(1)(A) of the Act occurred at Carbon's premises in the southeast portion of one county. (B. A. 110). The undisputed evidence further showed that UCW'S program was limited to organizing employees in the timber industry in Region 23. (B. A. 157).

Even such facts do not warrant the broad and blanket Board order enforced by the Court, but would require that the order be restricted to the geographical area covered by Region 23 and to the program of organizing employees of timbermen in that Region. Petitioners submit that in its findings and conclusion of justification for the scope of the Board order, and in enforcing the Board's order without modifications, the Court of Appeals erred as a matter of law.

V. THE COURT'S STATEMENT THAT THE "UNFAIR LABOR PRACTICES CONSISTED IN INTERFERING WITH EMPLOYEES OF TIMBERMEN" DELIVERING MINE TIMBERS TO CARBON, IS NOT SUPPORTED BY, BUT IS CONTRARY TO, THE SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE.

In its opinion (R. A. 96) the Court stated that the "unfair labor practices consisted in interfering with employees of timbermen who were delivering mine timbers to" Carbon. Following this statement it agrees that, with reference to the conduct which the Board held violative of Section 8(b)(4)(A) and (B), that the Board's findings—in their limited aspect—were amply supported by the evidence. The Court then agreed that the Board found upon ample evidence that petitioners had "violated section 8(b)(1)(A) of the act by the coercion exercised on one Bryant, an employee of one of the timbermen." (R. A. 96).

It would seem that the first quoted statement above is an obvious error, for the Board found that it was the picketing of Carbon's employees which was in violation of Section 8(b)(4), not interfering with timbermen's employees. Moreover, such statement is not consistent with the Court's further statement that the coercion of one employee, Bryant, violated Section 8(b)(1)(A).

Petitioners submit that the Court erred as a matter of law in its statement that the "unfair labor practices consisted in interfering with employees of timbermen" delivering mine timbers to Carbon. The Board did not so find; and the evidence shows that while two employees were stopped, neither could identify the persons who stopped him. (Tr.

27). Such statement is not supported by, and is contrary to, the Board's findings and the substantial evidence on the record considered as a whole.

CONCLUSION

For the reasons hereinabove set forth, it is submitted that the petition for writ of certiorari as prayed for should be granted and that this case should be reviewed by this Court.

Respectfully sumitted,

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Washington, D. C.

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Charleston, West Virginia

Counsel for Petitioners.

APPENDIX

Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136 et seq.):

DEFINITIONS

Sec. 2. When used in this Act—

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined. (61 Stat. 137; 29 USCA, 1951 Cum. An. Pkt. Pt., Section 152).

* * *

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose

of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3) of this title. (29 USCA, 1951 Cum. An. Pkt. Pt., Section 157; 61 Stat. 140).

* * *

UNFAIR LABOR PRACTICES

Section 8.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

* * *

(4) To engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any person: (B) forcing or requiring any other employer to recognize or bargain with a labor organization

as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of this title; * * * (29 USCA, 1951 Cum. An. Pkt. Pt., Section 158; 65 Stat. 601).

* * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10.(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 of this title) affecting commerce. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action . . . as will effectuate the policies of this subchapter; * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which applications may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall

certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of Title 28. (29 USCA. 1951, Cum. An. Pkt. Pt., Section 160(e); 61 Stat. 146; Act June 25, 1948, c. 648, Sec. 32, 62 Stat. 991).

* * *

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondents, United Construction Workers, affiliated with United Mine Workers of America, and District 50 United

Mine Workers of America, and their officers, representatives, successors, assigns, and agents, including the Respondents Charles A. Neal, Elza Johnson, and Sherman Blackshire, shall:

1. Cease and desist from:

(a) Inducing and encouraging the employees of Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Claude Saul, Charles Wesley Foreman, and George T. Wright) to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or commodities, or to perform any services for their respective employers, where an object thereof is (1) to force or require any employer or self-employed person to join any labor or employer organization; or (2) to force or require Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright; or (3) to force or require C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright to recognize or bargain with United Construction Workers, affiliated with United Mine Workers of America, or District 50, United Mine Workers of America as the representative of their employees unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act:

(b) Restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

(2) Take the following affirmative action which the

Board finds will effectuate the policies of the Act:

(a) Post at their business office at Charleston, West Virginia, copies of the notice attached hereto as Appendix A.[1] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by their official representatives, be posted by them immediately upon receipt thereof and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by said Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

And it is further ordered that the complaint, insofar as it alleges that the Respondents violated Section 8(b) (4) (A) of the Act by threatening, instructing, and ordering employees of Huffman, Lynch, and Saul at Cabin Creek Junction to engage in a strike or concerted refusal in the course of their employment to transport or otherwise handle or work on mine timber and other material, an object thereof being to force and require their employers to join United Construction Workers, affiliated with United Mine Workers of America or District 50, United Mine Workers of America and Central West Virginia Lumbermans' Association, and insofar as it alleges violations of Section 8(b) (1) (A) other than the one found herein, be, and it hereby is, dismissed.

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1 In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted, before the words, "A DECISION AND ORDER," the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

NOTICE

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

We will not induce or encourage the employees of Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport. or otherwise handle or work on any goods, articles, or commodities, or to perform any services for their respective employers where an object thereof is (a) to force or require any employer or self-employed person to join any labor or employer organization; or (b) to force or require Carbon Fuel Company or any employer (other than C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright) or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of C. C. Huffman, John J. Lynch, Clyde Saul, Charles Wesley Foreman, and George T. Wright; or (c) to force or require C. C. Huffman, John J. Lynch, Clude Saul, Charles Wesley Foreman, and George T. Wright to recognize or bargain with United Construction Workers, affiliated with United Mine Workers of America, or District 50, United Mine Workers of America, as the representative of their employees unless and until such labor organizations has been certified as the representative of such employees under the provisions of Section 9 of the Act.

We will not restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

United Construction Workers, Affiliated with United Mine Workers of America
(Labor Organization)

By.....
(Title of Officer)

Dated.....

District 50, United Mine Workers of America
(Labor Organization)

By.....
(Title of Officer)

Dated.....

By.....
(Agent) Charles A. Neal

Dated.....

By.....
(Agent) Elza Johnson

Dated.....

By.....
(Agent) Sherman Blackshire

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 351

UNITED CONSTRUCTION WORKERS, AFFILIATED WITH UNITED MINE WORKERS OF AMERICA; DISTRICT 50, UNITED MINE WORKERS; AND CHARLES A. NEAL, ELZA JOHNSON, AND SHERMAN BLACKSHIRE, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. A. 95-96)[1] is

[1] The designations "R. A." and "B. A." refer, respectively, to the appendix to petitioners' brief and the appendix to the Board's brief in the court below, which together comprise the record here.

not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (B. A. 82-91, 27-51) are reported at 94 NLRB 1731.

JURISDICTION

The judgment of the court below (R. A. 97) was entered on July 18, 1952. The petition for a writ of certiorari was filed on September 24, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether the order of the Board, enforced by the Court of Appeals, is a reasonable exercise of the Board's discretion in shaping a remedy appropriate to the situation requiring redress.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are set forth in the Appendix to petitioners' brief at pp. 61-64.

STATEMENT

A group of employers, known as timbermen, are individually engaged in producing mine timbers, headers, and posts. They perform some of the work themselves and also employ a crew of men. The timbermen sell substantially all of their output to the Carbon Coal Company, which is en-

gaged in mining, processing, and selling bituminous coal. (B. A. 30-31.)

For some time prior to April 1950, the United Construction Workers (referred to hereafter as "United") and District 50, both affiliated with the United Mine Workers, had sought with little success to organize the workers in the timber industry (B. A. 32). The timbermen, in particular, had never recognized United, nor had United, or any other labor organization, been certified by the Board as the bargaining representative of any of their employees (B. A. 32-34). In their capacity as employers, the timbermen had never joined the Central West Virginia Lumbermen's Association, an employers' association, and in their capacity as self-employed persons, they had never joined United (B. A. 35, 36).

On April 17, 1950, United entered into a closed-shop contract with the Lumbermen's Association governing the terms and conditions of employment of all employees of members of the Association (B. A. 32). This agreement required all members of the Association to recognize and bargain with United as the representative of their employees (B. A. 32, 33).

Thereafter, petitioners undertook to compel the timbermen to recognize United as the representative of their employees, to join United as self-employed persons, and to become members of the Association as employers (B. A. 33-36). To ac-

complish these ends, petitioners threatened to prevent the timbermen from delivering timber to Carbon, but the timbermen nevertheless refused to accede to their demands (*ibid.*). Thereupon, petitioners proceeded to put pressure on the timbermen through Carbon. They established picket lines at the mine portals at Carbon's premises, and also engaged in individual solicitation of the miners, in pursuit of their plan to "go up around the mines and talk to the miners" and "see if they wouldn't quit using scab timbers" (B. A. 36-39; quoted matter appears at B. A. 165, 174).

In the course of picketing Carbon's premises, petitioner Johnson and a group of pickets, eight in number, arrived at the No. 3 mine while George Bryant, a driver for Huffman, a timberman, was unloading a truck of timber near the tipple (B. A. 37; 139-142). Johnson and the pickets walked up to the truck, and Johnson said to Bryant: "Where is your sticker?" Bryant replied, "I don't have any" (B. A. 37; 140). Johnson then said to Bryant: "Well, you can't unload any scab timber here. We are not going to allow it. Before we will let this mine run on scab timber, we will shut it down." (B. A. 37; 140.) Bryant stopped unloading his truck and returned with it to Huffman (B. A. 37; 140-141).

The Board found that, in violation of Section 8 (b) (4) (A) and (B) of the Act, petitioners had induced and encouraged the employees of Carbon

to engage in a strike or concerted refusal in the course of their employment to handle or work on mine timbers furnished by the timbermen, with the objects of (1) forcing or requiring Carbon to cease doing business with the timbermen; (2) forcing or requiring the Timbermen as employers to join the Association and as self-employed persons to join United; and (3) forcing or requiring the timbermen to recognize and bargain with United as the collective bargaining representative of their employees, although United had not been certified as such representative under the provisions of Section 9 of the Act (B. A. 84-85). The Board further found that petitioners, by refusing to permit employee George Bryant to continue with his work of unloading timber because he did not have a sticker on his truck indicating union membership, had restrained and coerced Bryant in the exercise of his right not to be a union member, thereby violating Section 8 (b) (1) (A) of the Act (B. A. 86).

The Board entered an order requiring petitioners to cease and desist from inducing or encouraging the employees of Carbon to strike or concertedly to refuse to work, where an object is (1) to force or require any employer or self-employed person to join any labor or employer organization; (2) to force or require Carbon or any employer (other than the timbermen) or other person to cease dealing in the products of the timbermen; or

(3) to force or require the timbermen to recognize or bargain with United or District 50 as the representative of their employees unless certified by the Board (B. A. 88). The Board's order further requires petitioners to cease and desist from restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act (B. A. 89). Finally, the Board's order requires petitioners to post notices publicizing the substantive terms of the order (B. A. 89).

In a *per curiam* opinion the Court of Appeals enforced the Board's order in full (R. A. 95-96), holding that the order was not too broad in view of the circumstances disclosed by the record (R. A. 96).

ARGUMENT

The decision below is clearly correct, is not in conflict with the decisions of any other court, and presents no question of general importance in the administration of the Act.

Petitioners contend that the order is too broad because it prohibits inducement, not only of the employees of Carbon, but also of the employees of other employers, to strike in furtherance of the prohibited objects. The identical contention was squarely rejected by this Court in *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694, 705-706, where this Court applied the principle that when a clear purpose to violate the law appears, "it is not

necessary that all of the untraveled roads to that end be left open and that only the worn one be closed" (p. 706).[2]

Application of this principle devitalizes as well petitioners' other objections to the breadth of the Board's order. Petitioners contend that the order should be confined to picketing alone, and should not extend to inducement of employees generally; that the order should be confined to prohibiting petitioners from forcing the five named timbermen to join United or the Association, and should not prohibit forcing any other employers or self-employed persons to join any labor or employer organizations; and that the order should be confined to prohibiting restraint and coercion of employee Bryant, or at most of employees of the timbermen, but should not extend to restraint and coercion of any other employees. In no instance, however, does the Board's order go beyond the class of ac-

[2] Petitioners attempt to distinguish the *Electrical Workers* case, contending that the timbermen do business only with Carbon, and that, therefore, an order prohibiting the inducement of Carbon's employees is sufficient to protect the timbermen. But the timbermen may in the future expand the number of their customers (indeed, one of them at present sells to mines other than Carbon (B. A. 149)), and they are entitled to the protection of that trade should it materialize. If such an expansion does not occur, the breadth of the order cannot injure petitioners, so that they have no basis for complaint. At any rate, the question presented by this particular application of the *Electrical Workers* principle to the facts of this case is hardly of sufficient importance to warrant review.

tivities of which petitioners' specific conduct is representative. To curtail it more narrowly would leave petitioners free to exert "the same type of pressure through other comparable channels." *Electrical Workers* case, at p. 706. The aggressive nature of petitioners' tactics makes it appropriate to guard against such a contingency.

Petitioners cite a number of cases, in this Court and in the Courts of Appeals, which they claim are in conflict with the decision below (Pet. 29, 53-54). All of the cited cases expound the precise principle applied by the court below in determining the propriety of the order's scope. None of them contains a factual situation sufficiently comparable to the one in this case to warrant even a colorable claim of conflict. Indeed, the only case analogous to the present one is this Court's decision in *Electrical Workers*, which squarely supports the decision below. Finally, petitioners are simply mistaken in their concern (*e.g.*, Pet. 29, 32-33, 54) that a different principle is being applied in appraising the breadth of an order against a labor organization than is utilized where the order is against an employer.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER, 1952.

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